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SPECIAL CIVIL APPLICATION NO 885 OF 1994.

Date of Decision:12/13.12.1995

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr Y S Mankad, Advocate for the petitioner

Mr N N Pandya, AGP for the State

CORAM ; N N MATHUR, J.

(Date: 12/13.12.1995)

ORAL JUDGMENT

This Special Civil Application has been filed by the Nagarpalika, Mandvi against the decision of the Collector, Kutch and against the order of the State Government whereby the Nagarpalika has been restrained from demolishing a part of the city wall of the dimension of 290 metres long and 2.70 meters broad and a height of 3 meters from Nava Naka upto the River.

2. The say of the petitioner-Nagarpalika is that by

the Government Resolution dated 9.6.1977, land of 'Gandhrang' (Fort wall) was vested in the petitioner-Nagarpalika after the same being demolished. The Collector, by communication dated 9.8.1977 - Annexure 'A' requested the State Government to restrain the Nagarpalika from demolishing the Fort wall in order to preserve it as historical monument. The Nagarpalika made report to the State Government stating that the fort wall is to be demolished as it is in dilapidated condition, it is being misused by the inhabitants by using it as a public latrine etc. causing nuisance. It was also stated that the wall has become dangerous to the life of passers-by. It was also pointed out that the said portion of the fort wall has not been declared as public monument under the provisions of the Ancient Monument Preservation Act, 1904 by the Department of Archives, Government of Gujarat. It was further stated that the demolition of the wall was necessary for the department and beautification of the Town. It appears that the Collector, Kutch, by subsequent letter dated 8.11.1977, asked the State Government that his earlier proposal as contained in the letter dated 23.8.1977 be treated as dropped and the fort wall may be handed over to the Municipality. Accordingly by the Government Resolution dated 23.6.1978, the fort wall was handed over to the Municipality and by G.R. dated 11.6.1984, the amended transfer of the land was also done as per the terms and conditions mentioned therein. The Government permitted the Nagarpalika to demolish the fort wall at its cost. It is further stated that under the Town Planning Scheme which has been sanctioned by the State Government, the fort wall was required to be demolished for providing the highway in the larger public interest. The nearby land for providing the highway has also been acquired and tenders were invited by public notice dated 22.6.1992 for demolition of the subject-fort wall. On this, some interested persons approached the Collector under the provisions of Section 258(1) of the Gujarat Municipalities Act with a request to restrain the Nagarpalika from demolishing the wall. Objection was raised on the ground that it was necessary to preserve the fort wall for historical purpose. It was also stated that the fort wall cannot be permitted to be demolished without permission of the Archaeological department. It was also stated that the demolition of the City wall is likely to cause breach of peace. The Nagarpalika, by way of filing reply to the objection, pointed out that the fort wall has not been declared as protected monument under the Act of 1904 and as such there is no necessity of obtaining any permission from the Archaeological department. It was also stated that there is absolutely no apprehension of breach of peace. However, the Collector, passed an order dated 7.11.1992, restraining

the Nagarpalika from demolishing the wall. The petitioner-Nagarpalika, aggrieved by the said order, preferred an appeal to the State Government, which was rejected by the order of the Director of Municipalities, the State of Gujarat dated 30.8.1993.

3. I have heard Mr Y S Mankad, learned Advocate for the petitioner and Mr N N Pandya, learned AGP for the State. At the threshold of the hearing of the matter, I asked the learned AGP to contact the department of Archaeology. Today, Mr S P Mehta, Technical Assistant in the office of the Superintendent of Archaeology, Kutch, Bhuj is present with necessary records. Mr A D Gosai, Superintendent Archaeological Department, office of the Director of Archaeology, Ahmedabad is also present. Both of them have rendered their assistance in deciding this matter.